

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY DIVISION**

MATTHEW GIBSON,

Plaintiff,

v.

Civil Action No. 5:21-CV-00181

**LOUISE E. GOLDSTON, individually,
COUNTY COMMISSION OF RALEIGH
COUNTY, a political subdivision,
JEFF MCPEAKE, individually,
BRIAN WHITE, individually,
BOBBY STUMP, individually,
KYLE LUSK, individually,**

Defendants.

DEFENDANT KYLE LUSK'S MOTION TO DISMISS

Mr. Lusk moves to dismiss the claims against him pursuant to Federal Rules of Civil Procedure 12(b)(5) and (6) because he was not served a copy of the summons and because the Complaint fails to state a claim for which relief can be granted against him. As more fully detailed in the accompanying memorandum of law, Mr. Lusk was not a state actor or acting under color of law, therefore, the Plaintiff's 42 U.S.C. § 1983 claims against him fail as a matter of law. Further, because the acts at issue occurred in the course of Mr. Lusk's representation of a client during a Family Court hearing, Mr. Lusk is shielded from suit by the litigation privilege. For these reasons, Mr. Lusk respectfully requests that this Court dismiss all claims against him with prejudice.

KYLE LUSK,

By Counsel,

/s/ Arie M. Spitz

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CERTIFICATE OF SERVICE

I, Arie M. Spitz, counsel for Defendant Kyle Lusk, do hereby certify that I have filed a true copy of the foregoing ***Defendant Kyle Lusk's Motion to Dismiss*** this 19th day of April 2021 with the Clerk of the Court using the CM/ECF filing system, which will send notification of such filing to the below listed CM/ECF participants:

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/s/ Arie M. Spitz

Arie M. Spitz (WVSB # 10867)